

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on February 7, 2001 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Rod Bitney, Vice Chairman (R)  
Rep. Gary Matthews, Vice Chairman (D)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Roy Brown (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Dennis Himmelberger (R)  
Rep. Carol C. Juneau (D)  
Rep. Jim Keane (D)  
Rep. Rick Laible (R)  
Rep. Bob Lawson (R)  
Rep. John Musgrove (D)  
Rep. William Price (R)  
Rep. Allen Rome (R)  
Rep. Donald Steinbeisser (R)  
Rep. Brett Tramelli (D)  
Rep. James Whitaker (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Gordon Higgins, Legislative Branch  
Jane Nofsinger, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB463, SB30, SB156, SB157,  
SB106, 2/1/2001  
Executive Action: HB389, SB59, SB157, SB30,  
SB156

HEARING ON SB156

Sponsor: REP. VICKI COCCHIARELLA, SD32, Missoula

Proponents: George Wood, Montana Self-Insurers Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. COCCHIARELLA, SD32, Missoula, stated this is a bill for self-insured employers and "clarifies the assessment fee paid by a private insurer under the Workers' Compensation Act."

Proponents' Testimony:

Mr. Wood said he represents employers under the plan who have been given permission to self-insure. He said if one member goes bankrupt, then each member is assessed so the injured worker does not lose his or her benefits.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. PRICE asked Mr. Wood if the assessments were continuous or only in the event of bankruptcy. Mr. Wood said they were only in the event of bankruptcy.

REP. LAIBLE asked Mr. Wood how many people were covered this way in the state. Mr. Wood replied there were approximately 528 employees.

Closing by Sponsor:

SEN. COCCHIARELLA closed and asked for the committee's support.

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HEARING ON SB157

Sponsor: SEN. VICKI COCCHIARELLA, SD32, Missoula

Proponents: George Wood, Montana Self-Insurers Assn.  
Nancy Butler, State Fund

**Bob Worthington, Montana Municipal Insurance Authority**  
**Dwight Easton, Farmers Insurance**

**{Tape : 1; Side : B; Approx. Time Counter : 20.2}**

**Opponents: Al Smith, Montana Trial Lawyers Assn.**

**Opening Statement by Sponsor:**

**SEN. COCCHIARELLA, SD32, Missoula,** said the bill makes sure injured workers get benefits and employees have coverage. Occasionally some workers try to use the law to their advantage when they are not entitled to benefits. This hurts other workers, she said. This bill addresses a few instances when workers use and abuse the system. He stated, when the employee goes back to limited work, the employer makes up the difference in part-time temporary benefits. The employer benefits by getting a loyal employee back, yet there is an incentive to get the worker back to full-time wages. However, if the employee is fired for disciplinary reasons, he or she cannot receive benefits.

**Proponents' Testimony:**

**Mr. Wood** explained if the employee is brought back to the same job at the same wage, and if it ends because of the employer's action, the employee returns to temporary disability. However, if the termination is due to the worker, he or she is not entitled to go back on disability.

**Ms. Butler** said she supported the bill.

**Mr. Worthington** stated the bill levels the playing field, especially for firefighters and police.

**Mr. Easton** said the bill closes a loophole in the current law.

**Opponents' Testimony:**

**Mr. Smith** called the bill another move to "tip the scale to the employer." He said there is no loophole except "the big one you are opening up." He cited the example of the railroads' "rubber room" where employees are brought back to work, after the injury and prior to healing, and placed in a room where there is nothing to do, in order to avoid paying disability to the worker. He asked the committee to keep the balance as it was, and provide some protection to the worker so they could not be fired to get them off the workers' compensation.

**Questions from Committee Members and Responses:**

**REP. BOOKOUT-REINICKE** asked **SEN. COCCHIARELLA** if the bill limited the employee's right to contest a wrongful discharge. **SEN. COCCHIARELLI** said the bill does nothing to stop that.

**Closing by Sponsor:**

**SEN. COCCHIARELLA** said "rubber rooms and railroads" have nothing to do with this bill. No employer wants to put an employee in a room with nothing to do, she said. She said often there is more of a problem that the injured employee is given too much to do. She also said if an employee simply decides they do not like the job, they do not get to leave, then come back and collect benefits. She noted to the committee that the bill received the unanimous support of the Senate, both in committee and on the Senate Floor.

**HEARING ON HB463**

**Sponsor:** **REP. MICHELLE LEE, HD26, Livingston**

**Proponents:** **Cindy Weese, Montana Coalition Against Sex and Domestic Violence**

**Tootie Welker, Sanders Co. Coalition for Families**

**Patti Keebler, MT AFL-CIO**

**REP. BOOKOUT-REINICKE, HD71, Alberton**

**Linda Gryczan, Montana Women's Lobby**

**Rachael Herrin, self**

**Wendy Young, WEEL**

**Sharon Hoff-Broadway, Montana Catholic Conference**

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. MICHELE LEE, HD26, Livingston,** said this bill enables victims of domestic violence to receive unemployment benefits after they have left their job. The bill also adds a definition of "domestic violence" to the code, she noted. HB463 will enable domestic violence victims to no longer be subject to a person who controls their finances, she said. A lifeline and a safety net will also be provided for those individuals who live their lives in fear, she stated.

**Proponents' Testimony:**

**Ms. Weiss** said every 16 seconds someone is battered. She explained over 50% of women lose three days a month from work. Many women return to their abuser several times before they leave for good, she said. The main reason they return is because of economic conditions, according to **Ms. Weiss**. This law will provide a way for victims of domestic abuse to escape their abuser, she concluded.

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**Ms. Welker** called this bill one more tool to combat violence. She agreed with **Ms. Weiss** one reason women do not leave abusers is because of their economic dependence on the abuser. She said this bill would make it easier to leave the abuser and move to safety. **EXHIBIT (buh31a01)**

**Ms. Keebler** said she offered the support of 50,000 Montana workers for this bill. She said her organization does work to support families in times of crisis, and this includes domestic violence.

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**REP. BOOKOUT-REINICKE** said she worked in Mineral County for many years on the Domestic Violence Crisis Hotline. She implored the committee to support this bill.

**Ms. Grycson** read a written testimony from Rachel Herrin. **EXHIBIT (buh31a02)**

**Ms. Young** said she represented a family currently on assistance. She said she wished she could tell more about them but she could not because the family was in hiding. The woman had worked in the same place as her husband, so she was unable to tell her employer where she was. The woman had been in hiding for two years and was not entitled to receive unemployment insurance from her job because she had to move to a safe location and could not reveal her whereabouts.

**Ms. Hoff-Broadway** said she knew of people who were victims and she had been one herself. This bill would help keep people off welfare, she added.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REP. BOOKOUT-REINICKE** asked **REP. LEE** if there were mechanisms in place to keep the payment confidential. **REP. LEE** deferred to **Mr. Braun** who said there was a confidentiality provision.

**REP. MATTHEWS** asked what happens if there was a restraining order for something that did not pertain to domestic violence. **REP. LEE** said a restraining order can be ordered for other reasons, but this section was specific to domestic violence. **Ms. Welker** said in Montana the phrase has been changed to "order of protection."

**REP. JUNEAU** asked who would have access to the information of the location of the victim. **Mr. Braun** said the employees who needed to perform their public duties in relationship to the information would have access. **REP. JUNEAU** said the abuser will find them if they can and try to get this information.

**REP. LAWSON** inquired about the fiscal note. **Mr. Braun** said there were 7000 acts of domestic violence last year in Montana. He said some of these would involve the same victim, and not all of the victims would qualify for unemployment because many did not have jobs. Unemployment would pay \$188 for 14 weeks, he said. He said costs could only be estimated at this time, but that in two years they would have some figures to go on.

**REP. HIMMELBERGER** asked **Mr. Braun** if the employer account cannot be charged, would this come out of the trust fund. **Mr. Braun** said it would. **REP. HIMMELBERGER** then asked if this would potentially raise unemployment insurance rates for all. **Mr. Braun** said if the fund suffers a \$9.3 million hit, it will trigger Schedule 2. Currently, the rate is Schedule 1, which is the lowest rate.

**CHMN. MCKENNEY** asked if the individual could qualify to receive these benefits and still remain in the abusive relationship. **Mr. Braun** said this would give the victim the economic protection to move out. Most victims stay because of the economic situation. In many instances, the batterer forces the victim to stay at home and not work.

**Closing by Sponsor:**

**REP. LEE** stated a price cannot be put on a human life. This bill was about safety, she said, not money. When a victim has a way to escape, the risk is reduced, she concluded.

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**HEARING ON SB106**

**Sponsor:** SEN. MIKE SPRAGUE, SD6, Billings

**Proponents:** George Bennet, Montana Bankers Assn.  
Keith Colbo, Montanan Independent Bankers  
John Cadby, Montana Bankers Assn.

**Opponents:** David Paoli, self, attorney  
Al Smith, Montana Trial Lawyers Assn.

**Opening Statement by Sponsor:**

SEN. MIKE SPRAGUE, SD6, Billings, said the bill called for any contracts over \$100,000 to be in writing so as to be enforceable. He reminded the committee of the rhyme, "when in doubt, write it out." He said the bill was an act which provided that an action may not be brought against a regulated lender based on a promise with respect to a commercial loan in excess of \$100,000, unless the promise is in writing.

**Proponents' Testimony:**

Mr. Bennet noted the act excludes consumer loans and is about commercial loans. He said there have been law suits in the past based on alleged oral offers of loans. He said every state except Montana and Wyoming cover this in one way or another. He stated this bill will help make more money available. He pointed out the Uniform Commercial Code required written contracts for over \$500, and therefore this bill should be considered. **EXHIBIT (buh31a03)**

Mr. Colbo said this was a much narrower bill than had been before the committee previously. He said this bill makes sense.

Mr. Cadby said he was here in the 1980's when the crisis occurred. He said there was a rash of lawsuits because people think banks have "deep pockets." He said there were two bad faith lawsuits filed in Billings last week in which the people loaned to did not "make it," so the bank is being sued. He said the legislature should want to encourage the banks to make more loans and this bill is one way. **EXHIBIT (buh31a04)**

**Opponents' Testimony:**

**Mr. Paoli** told the committee that **SEN. SPRAGUE** said this bill was a small portion of a previous bill. The only similarity, **Mr. Paoli** said, was the word "small." He said this bill hits small business "right in the gut." He said it will take away small business' ability to protect themselves. The last thing Montana small businesses want is a lawsuit, he said. He said it is certainly not accurate to say Montana businessmen lie. To demonstrate his point, he held up a bronze sculpture of a cowboy and a man in a suit shaking hands. The title of the sculpture was "Montana Contract," he noted. He said he currently has a client who was promised a loan by a large bank. They even took him out to dinner to celebrate, he said. His client consequently made a contract and put money down on equipment, he continued. The loan was not granted and his client is now facing bankruptcy. This bill will not make more money available and will hurt small businesses, he said. Montanans should be able to do business on a "handshake and a look in the eye," he concluded.

**Mr. Smith** opposed the bill. He said it insulates banks and lenders from accountability. He said he had a problem with the part of the bill which says "an action may not be brought against the lender."

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He said the bankers already have the freedom to reduce anything to writing they want to. He added that relationships and trust cannot be reduced to writing. He said the job of the legislature is to provide protection for the people against unfair and harmful practices. **EXHIBIT(buh31a05)**

#### Questions from Committee Members and Responses:

**REP. BITNEY** asked **Mr. Bennet** why no signature was required in the act. **Mr. Bennet** said often at an auction a farmer may request to buy large equipment and an authorization is faxed to the farmer. He then asked how the \$100,000 figure was determined. **Mr. Bennet** said it is an arbitrary figure and some states say \$25,000. He said the bill originally used \$50,000.

**REP. GALLIK** said the bill seemed like immunity for bankers. **SEN. SPRAGUE** answered that getting a commitment on letterhead was a better way for the borrower.

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**REP. BROWN** asked **SEN. SPRAGUE** if it could be made clear an action for fraud was prohibited and not an action of contract. **SEN. SPRAGUE** said if someone sees a problem with it and wants to amend it, "it is your bill."

#### Closing by Sponsor:

**SEN. SPRAGUE** said the bill is needed and urged support.



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**HEARING ON SB30**

**Sponsor:** SEN. DALE MAHLUM, SD35, Missoula

**Proponents:** Jeffrey Tiberi, Montana Heritage Commission  
Steve Meloy, Department of Commerce  
Sharon McCabe, Montana Historical Society

**Opponents:** None

**Opening Statement by Sponsor:**

SEN. DALE MAHLUM, SD35, Missoula, the act would amend the experience requirements for a traction license to operate a steam locomotive. The requirements would be changed from 6 months fulltime experience to 480 hours total experience. He stated that volunteers are used in Virginia City to operate Locomotive No. 12 which runs between Virginia City and Nevada City, May 26-September 3. He said the volunteers come from all over the state, and are mostly retired railroad workers who have "railroading in their blood." He said, even if they are licensed by the FRA, they still need to be licensed in Montana. **EXHIBIT (buh31a06)**

**Proponents' Testimony:**

Mr. Tiberi stated Engine NO. 12 was Montana's only steam engine. He said the operator of the engine needed to know safety and boiler characteristics. He said the Department of Commerce would oversee the licensing of the individuals who wished to operate the engine. **EXHIBIT (buh31a07)**

Mr. Meloy called the bill an example of working together to lessen regulations not increase them. **EXHIBIT (buh31a08)**

Ms. MCCABE said she supported the bill which will allow for safe operation and upkeep of the historic engine. **EXHIBIT (buh31a09)**

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

REP. LAIBLE asked Mr. Hahn if the statute included antique farm equipment. Mr. Hahn said the statute had tried to create a separate license for locomotive steam engines. He said there may be shortlines created in other parts of the state in the future. He noted the Virginia City line did not cross any roads. Also, at

present, the antique farm equipment is exempt and is not affected by this bill.

**REP. GALLIK** asked **Mr. Tiberi** if the gas-powered or the steam-powered locomotive was cheaper to operate. **Mr. Tiberi** replied the gas-powered engine was cheaper. The C.A.Bovey Locomotive, which is gas-powered, is run by a Ford Pinto Engine which is hidden under the boiler cover, he added.

**Closing by Sponsor:**

**SEN. MAHLUM** reminded the committee that the taxpayers of Montana own Virginia City and their grandchildren will own it 100 years from now. He invited the committee to come to Virginia City and ride Engine NO.12.

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**EXECUTIVE ACTION ON SB30**

**Motion/Vote:** **REP. HIMMELBERGER** moved that **SB30 BE CONCURRED IN.**  
**Motion carried unanimously.**

**EXECUTIVE ACTION ON SB59**

**Motion:** **REP. HIMMELBERGER** moved that **SB59 DO PASS.**

**Discussion:**

**Motion:** **REP. HIMMELBERGER** moved that **SB59 BE AMENDED.**

**Discussion:**

**REP. HIMMELBERGER** told the committee **SEN. NELSON** had agreed to these amendments, as well as **Mr. Staples.**

**Mr. Higgins** said the amendments had two conditions: 1. The number of special events was limited to 3 per year, and 2. The net proceeds of the event must go back to the Post or Lodge.

**Vote:** Motion on the amendment **carried unanimously. 19-0.**

**Motion/Vote:** **REP. HIMMELBERGER** moved that **SB59 BE CONCURRED IN AS AMENDED.** Motion carried unanimously.

**EXECUTIVE ACTION ON HB389**

**Motion:** REP. LAWSON moved that HB389 DO PASS.

**Discussion:**

REP. LAWSON noted the bill had been modeled after the State of Idaho.

**Motion:** REP. LAWSON moved that HB389 BE AMENDED.

**Discussion:**

REP. LAIBLE said he liked the concept of the bill but opposed it as it was drafted because it "lets those who should be, off the hook." He said the installers should be included and have the same liability.

REP. MATTHEWS said if the state does not pass this legislation, the federal government will. He said he would support the bill.

REP. LAWSON agreed if the state did not pass the law, the federal government will within five years.

Mr. Doggett said he felt this bill addressed all the requirements which would be in the federal bill and agreed the federal law would go in effect within five years if there were no state statutes in place.

REP. LAWSON told the committee the idea for the bill had been brought to him three years ago, and he had worked on it extensively. He said he had observed a demonstrated problem for creation of the bill.

**Vote:** Motion HB389 carried 15-4 with Brown, Himmelberger, Laible, and McKenney voting no.

**EXECUTIVE ACTION ON SB156**

**Motion/Vote:** REP. GALVIN-HALCRO moved that SB156 BE CONCURRED IN. Motion carried unanimously. 19-0.

**EXECUTIVE ACTION ON SB157**

**Motion/Vote:** REP. LAIBLE moved that SB157 BE CONCURRED IN. Motion carried 15-4 with Fritz, Galvin-Halcro, Juneau, and Musgrove voting no.

**ADJOURNMENT**

Adjournment: 11:30 A.M.

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REP. JOE MCKENNEY, Chairman

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JANE NOFSINGER, Secretary

JM/JN

**EXHIBIT** (buh31aad)